

848TBROC

Conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 BARBARA BROUGHEL,

4 Plaintiff,

5 v.

07 CV 7755 (GBD)

6 THE BATTERY CONSERVANCY, et  
7 al.,

8 Defendants.

-----x

9 New York, N.Y.  
10 April 8, 2008  
11 10:05 a.m.

12 Before:

13 HON. GEORGE B. DANIELS,

14 District Judge

15 APPEARANCES

16 THE LAW OFFICE OF BARBARA HOFFMAN

17 Attorneys for Plaintiff

18 BY: BARBARA T. HOFFMAN

19 SULLIVAN & CROMWELL

20 Attorneys for Defendants The Battery Conservancy and  
21 Warrie Price

22 BY: MARGARET KOLODNY PFEIFFER

23 RITA CARRIER

24 SINNREITCH & KOSAKOFF

25 Attorneys for Defendants Claire Weisz and Mark Yoes d/b/a  
Weisz + Yoes

BY: JARRETT M. BEHAR

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1 (Case called)

2 MS. HOFFMAN: Good morning, your Honor, Barbara  
3 Hoffman, Hoffman Law Firm, representing Barbara Broughel,  
4 plaintiff.

5 THE COURT: Good morning.

6 MS. PFEIFFER: Good morning, your Honor, Margaret  
7 Pfeiffer, and I have with me Rita Carrier, we represent The  
8 Battery Conservancy and Warrie Price.

9 THE COURT: Good morning.

10 MR. BEHAR: Good morning, your Honor, Jarrett Behar,  
11 Sinnreich & Kosakoff, we represent the defendants Claire Weisz  
12 and Mark Yoes doing business as Weisz + Yoes.

13 THE COURT: Good morning.

14 Let me start ask you, Ms. Hoffman. What's the status  
15 at this point? I received some letters last month with regard  
16 to disputes over motion and deposition. What is the status?17 MS. HOFFMAN: Your Honor, you issued a stay on the  
18 discovery of the depositions that had been scheduled, and since  
19 that time the Battery Conservancy and Warrie Price filed their  
20 motion for judgment on the pleadings. We responded to that  
21 motion last Monday in accordance with the schedule that had  
22 been agreed to, and we cross-moved for a preliminary  
23 injunction.24 And then quite astonishingly we received -- at least  
25 it was astonishing to me -- we received papers on Friday after

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1       we had filed our papers with you on behalf of Weisz + Yoes in  
2       which they moved for judgment on the pleadings which was  
3       actually several months after -- well, at least one month  
4       before the alleged intention of the defendant to move for  
5       judgment on the pleadings and two months after we had served  
6       the notice to take depositions of Ms. Claire Weisz of Weisz +  
7       Yoes.

8                   THE COURT: Are the grounds any different than the  
9       first motion?

10                  MS. HOFFMAN: I believe that they're more or less the  
11       same grounds.

12                  THE COURT: So what do you think should be done at  
13       this point?

14                  MS. HOFFMAN: As I said, I thought it was burdensome  
15       to have to respond to two different motions, having filed our  
16       original motion papers which were extensive with numerous  
17       declarations.

18                  THE COURT: As I always say to lawyers, if your first  
19       set of papers were persuasive I suggest you not respond, but if  
20       you think it compels you to say something different than what  
21       you have to say --

22                  MS. HOFFMAN: If that's an option and I can just say  
23       ditto, I would be very happy to do it. Alternatively, if we do  
24       respond, and I guess from our perspective we really don't want  
25       to make a big deal of it, I think probably against Weisz + Yoes

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1 we would in fact request leave to move for partial summary  
2 judgment on the issue of copyright infringement since we  
3 believe that there's actually no disputed issue of fact that  
4 the images of my client, Barbara Broughel, who is the artist  
5 who we claim was wrongfully removed from this project that she  
6 was selected to do, there's absolutely no dispute that the  
7 images appeared on the websites of both Weisz + Yoes and the  
8 Battery Conservancy.

9 THE COURT: When are you scheduled to file a reply?

10 MS. HOFFMAN: We had an agreed-to schedule, and I  
11 believe the reply is due on -- the reply of our answer would be  
12 due on -- their papers would be on the 21st of April, then  
13 following that they would have to reply to our motion for the  
14 preliminary injunction, and then we would have a reply on that,  
15 which would be the normal time after April 21st.

16 THE COURT: Given that further schedule, I assume  
17 either one of those opportunities that you can supplement  
18 whatever you need to supplement to respond to or do you need  
19 more time?

20 MS. HOFFMAN: No, I think within that framework we  
21 could clearly do it.

22 THE COURT: Let me see if we can stay on that schedule  
23 then, and then to the extent that you think it's appropriate to  
24 add something further then you can do that in that time frame.

25 Let me turn to the other side. Ms. Pfeiffer, how do

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1 you want to proceed?

2 MS. PFEIFFER: Your Honor, we had raised -- we had  
3 asked for this conference under Rule 37 to discuss a further  
4 stay pending the resolution of our motion for judgment on the  
5 pleadings which is made on behalf of the Conservancy and Warrie  
6 Price. But that's a different subject than the one about Weisz  
7 + Yoes having filed a separate motion for judgment on the  
8 pleadings last week.

9 THE COURT: What is the status? I don't remember what  
10 we did about the discovery.

11 MS. PFEIFFER: Your Honor, we stipulated between  
12 counsel, actually among all three counsel, because I  
13 volunteered to do that, to obtain a stipulation, and it was  
14 agreed that discovery would be stayed pending the filing of the  
15 motions, that is the briefing on the motions. What we would  
16 like to do is to extend the stay to the decision on the motion  
17 for judgement on the pleadings because, in our view, we think  
18 you're going to grant the motion, and we believe that we should  
19 not start on discovery on plaintiff's nine different causes of  
20 action before that time.

21 THE COURT: When do you think the motions would be  
22 fully submitted?

23 MS. PFEIFFER: Our motion will be fully submitted on  
24 the 21st.

25 THE COURT: When will all motions be fully submitted?

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1 MS. PFEIFFER: I believe it's the 28th of April, your  
2 Honor.

3 THE COURT: This is what I'm willing to do: I think  
4 that I will set it down maybe the first week in May and you  
5 could be heard on the motions, and at that point in time I will  
6 decide, having had an opportunity to review the papers and hear  
7 you further, whether or not it even makes sense to rule from  
8 the bench or makes sense to stay discovery further or it makes  
9 sense to -- depending on the reactions on various motions,  
10 whether it makes sense for a further temporary stay or to move  
11 forward with discovery on any particular issue.

12 So I think that it makes sense to stay it until the  
13 decision is made at that point, but I would like to see the  
14 papers and see what the papers have to say and then I can give  
15 you an opportunity at that point to convince me that a further  
16 stay is warranted or not warranted or agreed that a stay is  
17 warranted or not.

18 MS. PFEIFFER: So your Honor, should we go ahead and  
19 file -- we were going to file a short brief on the stay, but it  
20 sounds as though we should just wait and address the merits of  
21 the motion.

22 THE COURT: Don't waste your time and expense to do  
23 that.

24 MS. PFEIFFER: Okay.

25 THE COURT: As I say, I'm willing to at least stay it

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1 until I see you again, and if you want to convince me -- you  
2 don't need much law to convince me if the merits of the case  
3 warrant that.

4 MS. PFEIFFER: Your Honor, if I might, I'm going to be  
5 out of the country until the middle of May.

6 THE COURT: What week would you be available?

7 MS. PFEIFFER: Any time after the 13th. I'm returning  
8 on the 13th.

9 THE COURT: What about the 14th? Too soon? Wait,  
10 that's wrong. Either the 14th or the 15th?

11 MS. PFEIFFER: The 15th would be better, your Honor.

12 MS. HOFFMAN: That would be fine for me, your Honor.

13 THE COURT: I'll schedule it now for 10:30 on the 15th  
14 and we'll hear the other matters then I'll hear you on the  
15 motion, and that will give me enough time to get the papers. I  
16 will have all the papers before the end of April and all the  
17 motions. So we'll do it that way, I'll stay discovery until  
18 the 15th, then I'll decide on the 15th whether or not any  
19 discovery should proceed and whether or not discovery should be  
20 stayed further.

21 MS. PFEIFFER: Thank you, your Honor.

22 THE COURT: Thank you, your Honor.

23 MR. BEHAR: Your Honor, just for the record -- I will  
24 say for the record I disagree with the characterization of what  
25 happened as per Weisz + Yoes as per the plaintiff, but other

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1 than that --

2 THE COURT: That I hear a lot.

3 Okay. Let's get to the merits of this and give me the  
4 papers. If there's anything else that arises between now and  
5 then let me know and I'll resolve it, but otherwise I'm  
6 interested in getting the papers so I can see the papers and  
7 I'll hear you further.

8 MS. HOFFMAN: Thank you, your Honor.

9 MS. PFEIFFER: Thank you, your Honor.

10 MR. BEHAR: Thank you, your Honor.

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